

# **What Schools Can Do, Aside From The Obvious, To Protect Themselves From Retaliation Claims**



**Schulman, Lopez,  
Hoffer & Adelstein LLP**

30<sup>th</sup> Annual School Law Conference  
February 26, 2016

Bryan Dahlberg [bdahlberg@slh-law.com](mailto:bdahlberg@slh-law.com) [www.slh-law.com](http://www.slh-law.com)

## **Overview of Employment Retaliation**

## Retaliation Claims Are on the Rise

- Retaliation claims are already the most common type of claim filed with the EEOC and Texas Workforce Commission. They are included in 45% of charges filed nationally, and that number continues to rise over the last several years.
- Retaliation claims are popular because the basic elements of a claim are easy to make out, and easy for jurors to understand and sympathize with.
- They are costly to defend, and even more costly to lose. Potential damages, when considering future lost wages and attorneys' fees, can easily eclipse a million dollars.

## Retaliation Defined

Employment retaliation occurs when an employer takes an ***adverse employment action*** against an employee ***because*** that employee has engaged in a ***protected activity***.

## Key Terms

- **Protected Activity** – Will be defined by each of the various statutes, and will usually include the broad “opposition” to a discriminatory or unlawful practice.
- **Adverse Employment Action** – Means actions that are “materially adverse” and which might dissuade a reasonable employee from engaging in protected activity. This is *broader* for retaliation claims than it is for discrimination.
- **Causation** –Most retaliation statutes apply the “but for” standard of causation, as opposed to the less stringent “motivating factor” standard applicable to discrimination claims.

## Anti-Retaliation Statutes

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: What Schools Can Do, Aside from the Obvious, to Protect Themselves from Retaliation Claims

Also available as part of the eCourse

[Employment Issues in School Law](#)

First appeared as part of the conference materials for the  
31<sup>st</sup> Annual School Law Conference session

"What Schools Can Do, Aside from the Obvious, to Protect Themselves from Retaliation Claims"